DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAY 6 2008

Mr. Robert J. Doyle
Director of Regulations and Interpretations
Employee Benefits Security Administration
Department of Labor
200 Constitution Avenue, NW, Suite N-5655
Washington, DC 20210

Dear Bob:

This is in response to an inquiry from Mr. John J. Canary of your office regarding the effect of certain plan amendments on the pre-approved, qualified status of a master and prototype (M&P) plan. In particular, Mr. Canary has asked whether an amendment by the sponsor of an M&P plan to reflect the guidance in Field Assistance Bulletin (FAB) No. 2008-01 regarding fiduciary responsibility for collection of delinquent contributions, will adversely affect the pre-approved, qualified status of the plan.

The guidance in FAB No. 2008-01 addresses the need, under Title I of the Employee Retirement Income Security Act of 1974 (ERISA), for plans to specify the duties of trustees with respect to the responsibility for collection of delinquent contributions. We understand that there is a question as to whether an M&P sponsor's amendment of an M&P plan for FAB No. 2008-01 would jeopardize the pre-approved, qualified status of the plan or cause the plans of adopting employers to be treated as individually designed plans.

The Internal Revenue Service's procedures contemplate that sponsors of M&P plans will need to or may wish to amend their plans from time to time. Under those procedures, an amendment to the plan merely reflecting FAB No. 2008-01 that is adopted by the sponsor of an M&P plan on behalf of employers that have adopted the plan will not jeopardize the pre-approved, qualified status of the plan or cause the plans of adopting employers to be treated as individually designed plans.

The Service issues opinion letters on the qualified status of M&P plans under § 401(a) or § 403(a) of the Internal Revenue Code and the status for exemption of any related trust or custodial accounts under § 501(a). An opinion letter expresses an opinion only as to the requirements of the Internal Revenue Code and Title II of ERISA. It is not an opinion as to the requirements of Title I of ERISA or other federal, state or local statutes.

Applying the Service's current guidance (Rev. Proc. 2005-16 and Rev. Proc. 2007-44), an M&P plan with a favorable opinion letter will not lose its pre-approved, qualified status merely because the M&P sponsor amends the plan or trust on behalf of all adopting employers to conform the plan to the guidance in FAB No. 2008-01, regardless of whether such amendment is voluntary or required by law, including a court-ordered amendment. Moreover, such an amendment by the M&P sponsor will not cause the plans of any adopting employers to be treated as individually designed plans. Thus, the sponsor of an M&P plan with a current favorable opinion letter may amend the plan or trust for FAB No. 2008-01 without jeopardizing the opinion letter of the sponsor or any determination letters issued to adopting employers.

In the unexpected event that the amendment for FAB No. 2008-01 causes the plan to fail to satisfy the qualification requirements of § 401(a) of the Code, the M&P sponsor will have the opportunity to amend the plan retroactively, as permitted under § 401(b), to preserve the qualified status of the plan.

Please address any questions regarding this letter to Martin Pippins (202-283-9698).

Sincerely,

Michael D. Julianelle
Director, Employee Plans